

Tuesday, 6 August, 1946

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

On an application on behalf
of the Prosecution for leave to file the attached
application under Rule 6(b)(1) relative to IPS
Documents Nos. 1744 and 1906 (Paper
No. 307).

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth of
Australia.

Reported by:

Julian Wolf
Official Court Reporter
IMTFE

Appearances:

For the Prosecution Section:

A. J. MANSFIELD, Justice, Associate Counsel, acting on behalf of the Commonwealth of Australia; and
MR. DAVID N. SUTTON.

For the Defense Section:

MR. WILLIAM LOGAN, Jr., Counsel for the Accused KIDO, Koichi; and
Mr. MICHAEL LEVIN, Counsel for the Accused SUZUKI, Teiichi.
DR. SOMEI UZAWA, Chief Japanese Counsel
MR. ITSURO HAYASHI, Counsel for the Accused HASHIMOTO, Kingoro
MR. TOSHIO OKAMOTO, Counsel for the Accused MINAMI, Jiro.

For the Office of the General Secretary,
IMTFE.

MR. G. WALTER BOWMAN,
Clerk of the Court.
MR. C. A. NANTZ,
Deputy Clerk of the Court.

The proceedings were begun at 0900.

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THE PRESIDENT: Is there any discussion under Rule 6(b)(1)? What has been done?

MR. SUTTON: As to Documents 1906 and 1744, they were deposited last Tuesday pursuant to your Honor's order.

THE PRESIDENT: What about 1906; when was that deposited?

MR. SUTTON: Yes, sir.

THE PRESIDENT: When?

MR. SUTTON: One week ago today, - -

THE PRESIDENT: What did the defense decide?

MR. SUTTON: 30 July, 1946.

MR. LOGAN: With respect to Document 1906; that contains a great deal of correspondence of the American Embassy at Nanking, China, and I have examined both these Documents, but particularly with respect to 1906. There is a section in there devoted to this Nanking episode, and I believe it would be in order if the prosecution made translations of that entire section, not only of the excerpts that they wish to use - - I believe that the excerpts that they intend to use, of which I have a copy here, cover about one half of that matter that is contained in that book relating to

Nanking , and I believe that we should have the translation of the entire section relating to Nanking.

THE PRESIDENT: Do you really think it is necessary?

MR. LOGAN: Yes. With respect to the other book I do not think it is necessary at all, but I do with respect to this one book.

THE PRESIDENT: I will make the order in respect of the other book, that is, 1744.

What have you to say, Mr. Sutton?

MR. SUTTON: The part that the prosecution were offering in evidence was particularly the report of the American Consul as to the situation in Nanking, also, his report as to the situation at Wu-hu. As a matter of fact, in the part we have copied, we did not include an enclosure in his letter, which was a letter from Doctor Bates. Of course, we would not have any objection to include it, but I anticipate, if that were included, counsel for the defense would raise some question about including that. One of the enclosures with the report of January 5, 1938 is a memorandum of Doctor Bates. That has not been processed; and there was a letter from a Mr. Craighill, dated December 17, 1937, giving his report of the situation, which was not processed. They are additional and to a certain extent cumulative

evidence of what is contained in the report of the Consul - - the official report of the conditions at Nanking. I do not know offhand of any other documents in this volume, which contains all of the correspondence and copies of dispatches for a period of a year or so at the Embassy at Nanking, immediately bearing on this situation at Nanking. There may be some in there. We selected the official reports and a couple -- and two telegrams and they were processed.

MR. LOGAN: There are some other reports there. Those are the ones I believe we should have Japanese copies of.

MR. SUTTON: Documents, as I understand it, will be available for the defense to introduce -- any part of or all -- any portion they may find of value in the presentation of their part of the case.

MR. LOGAN: Of course, that is not the purpose of this, as I understand it -- this application to amend the rule. It is just to avoid the translation of certain documents, and we are, under the Charter, entitled to Japanese copies of certain extracts. Instead of requiring you to make translations of the entire document, all we are asking is for the translation of that portion of this particular document which refers to Nanking episode.

MR. LEVIN: I believe that Japanese counsel are very anxious to get those copies.

THE PRESIDENT: Is that so?

MR. SUTTON: We have translated complete documents. This volume, while it referred to 1906 as one document, is actually a compilation or a filing place of perhaps a thousand different reports and also communications from the American Embassy. We have selected those which we thought pertinent, each of which is a self-contained document, and will offer those in evidence under the rules of the Court.

THE PRESIDENT: What does it involve to give Mr. Logan the balance?

MR. SUTTON: I beg your pardon?

THE PRESIDENT: What will it involve for you if I order that you give Mr. Logan those extra documents?

MR. SUTTON: I, sir, will have to have a list, because, as I said, there are perhaps a thousand letters, telegrams, communications and reports in this bound volume.

THE PRESIDENT: He says not. If he is stating the facts, he says that he is only asking for as much again as you have given him. Apparently you have given him about thirty sheets.

MR. LOGAN: If the Court please, perhaps Mr.

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THE PRESIDENT: He says not. If he is stating the facts, he says that he is only asking for as much again as you have given him. Apparently you have given him about thirty sheets.

MR. LOGAN: If the Court please, perhaps Mr.

Sutton misunderstood me. This entire book contains letters to the Embassy --

MR. LEVIN: Telegrams.

MR. LOGAN: Telegrams, and so forth, which have nothing to do with this case at all. I am not asking for those. All I am asking for is a translation of the part of the section that refers to Nanking (indicating). This is the Nanking section in here.

THE PRESIDENT: How much have you got in there, Mr. Logan?

MR. LEVIN: How much have you got and how much do you want?

MR. LOGAN: Roughly the same amount as here (indicating).

MR. SUTTON: Twenty single-spaced pages were processed.

THE PRESIDENT: He wants about one; that letter covering the whole of the Nanking Incident.

MR. SUTTON: Well, it is not filed as "Nanking." There are other things you will find -- a letter also inquiring about business matters and such as would normally pass over the desk of the American Embassy-- all filed in this volume.

MR. LOGAN: That is, all that in there, your Honor (indicating). This here is what we are interested

in, just to the Rape of Nanking; the same amount as we have here.

THE PRESIDENT: The Nanking Incident is a matter of great significance.

MR. LOGAN: Here is Bate's report. I do not believe I have that either.

MR. LEVIN: I think the easiest way to do this would be to have Mr. Logan sit down and mark the pages that he is to go through before --

THE PRESIDENT: I think you should give Mr. Logan all he requires, because he is not asking for the formal documents. He is asking for matters which are evidence as to the Nanking Incident, and will be before the Court. I think that I will direct that you give him what he requires in addition to what you have already given him.

MR. SUTTON: Would the Court ask him to indicate which of these dispatches, so as to -- so that there might be no misunderstanding?

THE PRESIDENT: I will give him the ones after I have personally gone through them and approved them. I will do that this afternoon.

MR. SUTTON: Very satisfactory, sir.

MR. LOGAN: This is a complete document of the excerpts you intend to use.

MR. SUTTON: I beg your pardon, this is complete 1906. There is some more we will now have to include in that, because several of the enclosures were omitted in that, but Doctor Bate's report and Mr. Craighill's report appear in enclosures.

MR. LOGAN: Is this Document 1906 that gave to us all the excerpts that you intend to use?

MR. SUTTON: That is right.

MR. LOGAN: I will go over the rest of it and mark what we have to.

THE PRESIDENT: I make the order with respect to 1744, and I will decide the balance of the matter this afternoon at one o'clock.

(Whereupon, at 0912, a recess
was taken.)

The proceedings were resumed at 1315
pursuant to recess.

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MR. LOGAN: Judge, we have gone through this document 1906, and we have marked the pages which we would like to have the Japanese and English excerpts of in addition to what prosecution is taking out of this particular section of this document, all of which relates to Nanking. It will make a total of about forty of these pages of which they have twenty-two.

THE PRESIDENT: I think we might consent to that to save you the trouble.

MR. SUTTON: May it please the Court, I do not have a memorandum from Mr. Logan as to what he is asking for. He says he has put some clips on certain parts of the book.

THE PRESIDENT: He did not have much time to do anything else, did he?

MR. SUTTON: Your Honor will see that those are entirely separate and distinct memoranda -- copies of telegrams and of reports. The prosecution expects to introduce into evidence certain reports, copies of which appear in the file that you have before you.

THE PRESIDENT: Yes.

MR. SUTTON: I do not understand that the

prosecution could be required to introduce other documents entirely separate as to time and as to substance which happened to appear filed in that compilation from the files of the American Embassy at Nanking.

THE PRESIDENT: But it is all in evidence. That is the trouble.

MR. SUTTON: But they could be introduced by the defense, any or all or several documents which appear therein; and there are several hundred of them, some three or four hundred different papers that are there -- appear bound together in that file. If defense might introduce any or all that it desires, it is the position of the prosecution that the defense cannot require the prosecution to introduce some. Apparently he has marked twelve, or how many, do you know?

MR. LEVIN: About twenty.

THE PRESIDENT: This is what you give him in addition to what you have already given them.

MR. SUTTON: Pardon?

THE PRESIDENT: This is what you give them in addition to what you have already given them. But you are not bound to introduce anything. You are under a

misapprehension, Mr. Sutton. You are not bound to introduce these things. This is only extra material the defense gets. You are not bound to introduce that extra material. It is their duty to do that.

MR. SUTTON: I do not understand that it is the duty of the prosecution to have processed for the defense some evidence which it may desire to have introduced since the prosecution does not desire to introduce it.

THE PRESIDENT: In no other court of the world is this done; of course, you understand that. This is only with a desire to help the defense with their case, which is not done elsewhere, I agree. It is not done elsewhere. It is unusual. But here we are doing the unusual, and we want to do it in the most reasonable way.

MR. LEVIN: In a measure, Mr. President, while there is the defense and prosecution, nevertheless it is really we are both, being it is all being done by SCAP, for that matter -- or, rather, the Legal Section of the Tribunal. It is really under the jurisdiction of the Tribunal. It is not a question as though there were two different parties, each of which were -- was bearing a portion of the expense, and that was involved. That is not involved in this at all. I think it is

merely a matter of expedition for both parties.

THE PRESIDENT: Well, I direct you get that. I will have to designate these documents.

MR. LOGAN: Judge, we talked about that a few minutes ago. I could make a list of those documents and submit it to the Clerk so he could insert them in the order and save you the trouble.

MR. SUTTON: As I understand it, your Honor, they are simply prepared and furnished to the defense.

THE PRESIDENT: You won't have to put those extra documents in.

MR. SUTTON: We won't distribute them but just give you a copy.

(Whereupon, at 1320, the proceedings were concluded.)

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